IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is approved for reporting or not)
[Chapter VIII Rule 32 (2)(b)]

Description of Case

Writ Petition No. 1697 (S/B) of 2002

Sri K.L. Rajput, son of Sri Mangal Sen,
Resident of C/o J.C. Pathak,
5/43, Kenal Road,
Bhotia Parao,
District – Nainital. …….**Petitioner.**

Versus

1. Presiding Officer, Industrial Tribunal Uttaranchal, Haldwani, District – Nainital.
2. M/s Century Pulp and Paper Mills, Ghanshyam Dham, Lalkaun, District – Nainital through its Manager.

……Respondents.

Approved for reporting.

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Not approved for reporting.

Dated of Decision July 22, 2005

Initial of Judge

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(Judgment Reserved)

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Hon'ble M.M. Ghildiyal, J.

Heard Sri L.P. Naithani, Sr. Advocate, assisted by Sri J.P. Joshi, learned counsel for the petitioner, learned standing counsel for respondent no. 1 and Sri Sharad Sharma and Sri T.A. Khan, learned counsel for the respondent no. 2.

Learned counsel for the parties are agreed to decide the writ petition at its admission stage.

The petitioner has challenged the order dated 23.08.2002 passed by Industrial Tribunal, Uttaranchal, Haldwani, District – Nainital (for short "Tribunal") with a prayer to quash the order and has further prayed the direct the respondent no. 2 i.e. Century Pulp and Paper Mills, Ghanshyam Dham, Lalkaun, District – Nainital (for short

"Company") to take back the petitioner in service with all back wages and other benefits.

The facts of the case as narrated by the petitioner are that petitioner was working with the Company with effect from 06.07.1987 as Material Feeding Mazdoor in the Raw Material Department and Continued till 18.04.1988, when he was removed from service. In fact, the appointment letter was issued on 08.09.1987 though he was working with the Company since 06.07.1987. In the appointment letter, which was issued on 08.09.1987 it is provided that the appointment is subject to initial probationary period of six months and the management reserves the right to extend it. After completion of the probationary period, if the conduct and performance is found satisfactory, the appointment shall be confirmed and the employee shall be absorbed in regular service of the Company. According to the petitioner, the probation period of six month from the date of appointment was completed on 07.03.1988 as he was working with the Company since 06.07.1987. Against the termination order the petitioner approached the Tribunal and the case was registered there as Adjudication Case No. 42 of 1995. However, the Tribunal by order dated 23.08.2002 dismissed the claim of the petitioner.

The submission of the petitioner is that he was working with the Company with effect from 06.07.1987 and probation period of six months came to an end on 05.01.1988 and even if it is assumed that the petitioner was appointed on 08.09.1987 as per appointment letter issued by the Company, this probation period was

expired on 07.03.1988 and the petitioner has been removed from service illegally without holding any enquiry.

Respondent no. 2 i.e. Company has filed counter affidavit and has denied the averments made in the writ petition and has submitted that petitioner was appointed as Material Feeding Mazdoor in the Raw Material Department by order dated 08.09.1987. However, as per Clause – I, the appointment of the petitioner was to take effect from the date of his joining and as per Clause – II, he was on probation period of six months, which was subject to the confirmation, after completion of probation period, if the conduct and performance of the petitioner was found satisfactory. It is further stated in the counter affidavit that petitioner has joined his service as Material Feeding Mazdoor in Raw Material Department on 18.10.1987 and his period of probation of six months ended on 17.04.1988. This is the date on which the petitioner was removed from the service. He was neither confirmed in the service nor completed the probation period and the order of termination was simpliciter in nature during the period of probation. Since, the petitioner's services were terminated when he was under probation, after assessing his work and conduct as per terms of the appointment letter, as such, there is no need for issuing the notice.

Learned counsel for the petitioner has submitted that petitioner was called for interview on 06.07.1987 and on the same date he joined his duties with the Company. However, the letter of appointment was issued on

08.09.1987 and in fact, in the appointment itself, it is mentioned that "your appointment shall take effect from 06.07.1987". This date was later on stroke by the Company and in place of "06.07.1987" "date of joining" is mentioned. Petitioner has filed Photostat copy of the appointment letter, which is Annexure No. 1 to the writ petition. This appointment letter was in possession of the petitioner. No doubt, after stroking 06.07.1987 "date of joining" is mentioned but the same has been done by the Company prior to issuing appointment letter to the petitioner and the Labour Court has rightly pleaded the genuineness of the appointment letter.

Learned counsel for the petitioner has submitted that even assuming that he has joined his duties on 18.10.1987, as submitted by the Company, the probation period was expired on 17.04.1988 and the petitioner has been removed from service on 18.04.1988, after the expiry of the probation period. Prior to termination of the service, neither any notice was given to petitioner nor any inquiry was conducted by the Company. The contents of the order are as under:-

"Since your services are no more required by the Company, the same are being terminated with immediate effect.

You are requested to collect your dues, if any, from the Accounts Department of the company after obtaining 'No Dues Certificate' from the Department concerned."

From the perusal for the aforesaid order it is clear that order is not stigmatic and simpliciter in nature. Learned counsel for the petitioner has placed reliance on the judgment passed by Hon'ble Supreme Court in

"Dipti Prakash Banerji Vs. Satvendra Nath Bose, National Centre for Basic Sciences, Calcutta and other" reported in 1999 (2) UPLBEC page 1048, wherein the Apex Court has held that if findings were arrived at in inquiry as to misconduct, behind the back of the officer or without regular departmental inquiry, a simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the inquiry was not held no findings were arrived at and the employer was not inclined to conduct the inquiry but at the same time, he did not want to continue the employee against, whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position, if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such circumstance, the allegations would be motive and not the foundation and the simple order of termination would be valid.

The submission of the petitioner is that Labour Court has recorded the finding that the conduct of the petitioner was not good as he was involved in the theft of asbestos sheet and has admitted. However, no action was taken by the company in respect of theft. Though there is no mention of the alleged conduct of the petitioner in order of termination. No such finding can be recorded without proper departmental inquiry. The finding recorded by the Labour Court regarding the theft is on the basis of the statement of the company / employer before the Labour Court and as such, the allegation of

theft was foundation of termination order and as such, the termination order is not simpliciter in nature. He has further submitted that though on the face of the termination order it is simpliciter and innocuous but the court should left the veil to determine the real nature of the order and if the order is punitive in nature he is entitled for protection.

In the written statement of the employer before Labour Court it is stated that the petitioner was involved in the theft of asbestos sheet, however, no action has been taken by the employer on the said incident. On the basis of this averment made in the written statement the Labour Court observed in the judgment that the petitioner was also found involved in the theft of asbestos sheet but at the same time Labour Court has recorded that the employer has not charged the petitioner for the alleged theft and in fact, the said alleged theft was not the foundation of order of termination. It was not necessary to go into the merit of the alleged theft. Thus, it is clear that neither any inquiry was conducted by the employer against the petitioner for alleged theft nor any finding was recorded regarding the alleged theft, as such, as held by the Apex Court the alleged theft could be motive and was recorded regarding the alleged theft, as such, as held by the Apex Court the alleged theft could be motive and was not the foundation of the termination order. The order is simpliciter in nature and cannot be said punitive.

Learned counsel for the petitioner has submitted that he had moved an application before the Labour court to summon the following documents, which were in progression of the company:

i. Joining report of 06.07.1987

ii. *Attendance sheet from July, 1987 to December 1988.*

iii. *Salary sheet for the period of July 1987 to December 1988.*

All these documents were required to prove date by joining, which were not filed by the company and due to not filing of the aforesaid documents by the company. Adverse inference should have drawn which the Tribunal has not drawn. Learned standing counsel for the respondent has submitted that the petitioner was not in service of respondent with effect from 06.07.1987. He was appointed by order dated 08.09.1987 and has joined on 18.10.1987. There was no occasion to produce the joining report dated 06.07.1987 and the attendance sheet from July 1987 to December, 1988 as also the salary chart as the company was not in possession of the aforesaid document. The petitioner has filed the photocopy of the appointment order which shows that he was appointed vide order dated 06.07.1987 and the said order was to take effect from the date of joining. Petitioner has joined his duties since 18.10.1987 he was in service of the company from the date of joining and not with effect from 06.07.1987. Adverse inference can be drawn only when the respondent is unable to produce the document which are in his possession. I find force in the submission of learned counsel for the respondent.

Learned counsel for the petitioner has further submitted that the real foundation for passing the termination order of the petitioner was alleged act of theft for which no inquiry was conducted and as such, the

order was punitive, which cannot be passed without giving opportunity to the petitioner. As already stated above no enquiry was conducted regarding alleged theft, in incident of alleged theft may be a motive and not the foundation for passing termination order.

For the reasons recorded above, writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

July 22, 2005
SKSharma